

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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JAN KONOPCA,

Civil No:3:15-cv-3348-MAS-LHG

Plaintiff,

**AMENDED COMPLAINT**  
**FOR VIOLATIONS OF THE**  
**TELEPHONE CONSUMER**  
**PROTECTION ACT**

-against-

**DEMAND FOR JURY TRIAL**

SANTANDER CONSUMER USA, INC. and  
SANTANDER BANK, N.A. f/k/a  
SOVEREIGN BANK,

Defendant.  
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Plaintiff JAN KONOPCA ("Plaintiff"), by and through his attorneys, Marcus & Zelman, LLC, as and for his Amended Complaint against the Defendants SANTANDER CONSUMER USA, INC. and SANTANDER BANK, N.A. formerly known as SOVEREIGN BANK, (hereinafter referred to as "Defendants"), respectfully sets forth, complains and alleges, upon information and belief, the following:

**INTRODUCTION/PRELIMINARY STATEMENT**

1. Plaintiff brings this action on his own behalf for damages and declaratory and injunctive relief arising from the Defendant's violation(s) under Title 47 of the United States Code, §227 commonly known as the Telephone Consumer Protection Act (TCPA).

**PARTIES**

2. Plaintiff is a resident of the State of New Jersey, County of Monmouth, residing in Long Branch, New Jersey.
3. Defendant SANTANDER CONSUMER USA, INC. ("Santander") is a corporation

incorporated under the laws of the State of Illinois, with its principal place of business located in Dallas, Texas.

4. Defendant, SANTANDER BANK, N.A. f/k/a SOVEREIGN BANK (“Sovereign”), is a national bank with its principal place of business located at 824 North Market Street, Suite 100, Wilmington, New Castle County, Delaware 19801.

#### **JURISDICTION AND VENUE**

5. The Court has jurisdiction over this matter pursuant to 28 USC §1331.
6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

#### **FIRST CAUSE OF ACTION** *(Santander’s Violations of the TCPA)*

7. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “6” herein with the same force and effect as if the same were set forth at length herein.
8. On information and belief, on a date better known to the Santander Defendant, Santander began its campaign of communicating with the Plaintiff via the use of an automated telephone dialing system and prerecorded messages throughout the past four years by calling his cell phone number of (732)222-2222 numerous times seeking a third party.
9. Plaintiff is the sole subscriber of the Sprint account bearing the phone number of (732)222-2222, and has been the sole subscriber of that account at all times relevant hereto.
10. Plaintiff is the sole party financially responsible for the payment of the Sprint account bearing the phone number of (732)222-2222, and has been the sole party

financially responsible for that account at all times relevant hereto.

11. Plaintiff is the customary and sole user of the cellular phone number (732)222-2222, and has been the customary and sole user of that phone number at all times relevant hereto.

12. The Defendant called from numerous phone numbers, including but not limited to 888-222-4227, 877-768-4721, 214-614-3300, 214-614-3380, 214-237-3670, 214-237-3516, 214-540-2035, 214-540-0714, 469-385-5260, 877-768-2265 and 303-658-9000, all of which numbers belongs to Defendant.

13. Plaintiff confirmed these phone numbers as belonging to the Defendant by calling each of the phone numbers and being greeted by a female computerized voice stating:

“Welcome to Santander” or “Thank you for calling Santander Consumer USA”.

14. Defendant specifically called the Plaintiff’s cellular phone over fifty times in the one month period beginning on August 17, 2012 and ending on September 15, 2012, calling the Plaintiff’s cellular phone up to eight times per day.

15. Defendant specifically used an automated telephone dialing system and prerecorded messages to call the Plaintiff on his cell phone on August 22, August 24, and August 28, 2012 amongst numerous other dates.

16. The Defendant would frequently leave prerecorded messages on the Plaintiff’s cell phone, which would typically repeat in a female robotic voice:

“Hello, this is Santander Consumer USA. Please contact our Servicing Department using our toll-free number at 1(888)222-4227. Again, our toll-free number is 1(888)222-4227. You may also access your account online at [www.SantanderConsumerUSA.com](http://www.SantanderConsumerUSA.com), using the My Account feature. Santander Consumer USA appreciates your prompt response.” (followed by the message in Spanish).

17. The Plaintiff never gave the Defendant his prior, express permission to call his cell phone via the use of an automated telephone dialing system. Upon information and belief, Plaintiff has never provided his cell phone number to Defendant or had any credit card, store card or other business relationship with the Defendant.
18. Plaintiff had no wish to be contacted on his cell phone via the use of an autodialer, and expressly directed Defendant to stop calling his cell phone number on numerous occasions.
19. By placing auto-dialed calls and prerecorded messages to the Plaintiff's cell phone, the Defendant violated 47 USC §227(b)(A)(iii) which prohibits using any automated telephone dialing system or an artificial prerecorded voice to any telephone number assigned to a cellular telephone service when calling to the plaintiff's cell phone.
20. The Defendant therefore willfully violated the TCPA numerous times by placing autodialled calls and prerecorded messages to the Plaintiff's cell phone without his prior, express consent.
21. Plaintiff has suffered actual damages because the Defendant's calls to his cell phone unnecessarily reduced the number of minutes he is allotted per month in his cell phone plan, which has limited minutes as a part of his cellular rate plan.
22. As a direct result of Defendant's placement of hundreds of calls to Plaintiff, Plaintiff was charged overusage fees for the Defendant's calls.
23. As a direct result of Defendant's placement of hundreds of calls to Plaintiff, Plaintiff further incurred increased monthly phone bills due to over usage of the minutes allotted to his cellular phone plan.

24. Defendant's communication efforts attempted and/or directed towards the Plaintiff violated various provisions of the TCPA, including but not limited to 47 USC §227(b)(A)(iii).
25. As a result of Defendant's violations of the TCPA, Plaintiff has been damaged and is entitled to damages in accordance with the TCPA.

**SECOND CAUSE OF ACTION**  
***(Sovereign's Violations of the TCPA)***

26. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "25" herein with the same force and effect as if the same were set forth at length herein.
27. On information and belief, on a date better known to the Sovereign Defendant, Sovereign began its campaign of communicating with the Plaintiff via the use of an automated telephone dialing system, prerecorded and artificial voice throughout the past four years by calling his cell phone number of (732)222-2222 numerous times seeking numerous third parties.
28. Plaintiff is the sole subscriber of the Sprint account bearing the phone number of (732)222-2222, and has been the sole subscriber of that account at all times relevant hereto.
29. Plaintiff is the sole party financially responsible for the payment of the Sprint account bearing the phone number of (732)222-2222, and has been the sole party financially responsible for that account at all times relevant hereto.
30. Plaintiff is the customary and sole user of the cellular phone number (732)222-

2222, and has been the customary and sole user of that phone number at all times relevant hereto.

31. The Sovereign Defendant would typically call from a blocked phone number.
32. Defendant specifically called the Plaintiff's cellular phone over fifteen times in the one month period beginning on September 8, 2011 and ending on October 11, 2011, calling the Plaintiff's cellular phone multiple times per day.
33. Defendant specifically used an automated telephone dialing system and prerecorded or artificial voice to call the Plaintiff on his cell phone on July 22, 2011, September 13, 2011, and September 28, 2011 amongst numerous other dates.
34. On those dates, and on numerous other dates, the Defendant utilized an artificial or prerecorded voice to call the Plaintiff's cell phone, which would typically state in a female robotic voice:

"Please hold for the next available representative".
35. After a pause, or often in middle of the foregoing prerecorded statement, a customer service representative would come on the line and state:

"Hello? Hi, this message is for Paul [redacted to protect non-party privacy]. My name is Magda, calling from Sovereign Bank. The number to reach us is 1(877)898-8468. Any of our team members can assist you. We await your call."

or

"Hello? This message is for Logan [redacted to protect non-party privacy]. My name is Carmen calling from Sovereign Bank. It is extremely important for you to return our call. (877)898-8468. Any agent can assist you."
36. The Plaintiff never gave the Defendant his prior, express permission to call his cell phone via the use of an automated telephone dialing system or via artificial or prerecorded voice. Upon information and belief, Plaintiff has never provided his

cell phone number to Defendant or had any credit card, store card or other business relationship with the Defendant, and indeed the voicemails generally specified a variety of individuals being sought, whom have no relationship with Plaintiff.

37. Plaintiff had no wish to be contacted on his cell phone via the use of an autodialer, and expressly directed Defendant to stop calling his cell phone number on numerous occasions.

38. By placing auto-dialed calls and prerecorded messages to the Plaintiff's cell phone, the Defendant violated 47 USC §227(b)(A)(iii) which prohibits using any automated telephone dialing system or an artificial prerecorded voice to any telephone number assigned to a cellular telephone service when calling to the plaintiff's cell phone.

39. The Defendant therefore willfully violated the TCPA numerous times by placing autodialled calls and artificial and prerecorded voice messages to the Plaintiff's cell phone without his prior, express consent.

40. Plaintiff has suffered actual damages because the Defendant's calls to his cell phone unnecessarily reduced the number of minutes he is allotted per month in his cell phone plan, which has limited minutes as a part of his cellular rate plan.

41. As a direct result of Defendant's placement of hundreds of calls to Plaintiff, Plaintiff was charged overusage fees for the Defendant's calls.

42. As a direct result of Defendant's placement of numerous calls to Plaintiff, Plaintiff further incurred increased monthly phone bills due to over usage of the minutes allotted to his cellular phone plan.

43. Defendant's communication efforts attempted and/or directed towards the Plaintiff

violated various provisions of the TCPA, including but not limited to 47 USC §227(b)(A)(iii).

44. As a result of Defendant's violations of the TCPA, Plaintiff has been damaged and is entitled to damages in accordance with the TCPA.

**DEMAND FOR TRIAL BY JURY**

45. Plaintiff hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully prays that judgment be entered against the Defendants as follows:

A. For mandatory statutory damages of \$500 each provided and pursuant to 47 USC §227(c)(2)(G)(3)(B), for all calls placed to the Plaintiff's cellular phone;

B. Plaintiff requests enhanced trebled damages of \$1,500 to be awarded to the Plaintiff per call, in accordance with the TCPA, for the Defendant's willful violations of the TCPA;

C. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: December 18, 2015

Respectfully submitted,

By: /s/ Yitzchak Zelman  
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